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Election  
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Atty Dkt No. 7005-0003  
PATENT

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In Re Application of:  
Alan D. OLSTEIN et al.

Serial No.: 10/082,618

Filing Date: February 22, 2002

Confirmation No.: 445

Group Art Unit: 1648

Examiner: Zachariah LUCAS

Title: **BACTERIOCIN-METAL COMPLEXES IN THE DETECTION OF  
PATHOGENS AND OTHER BIOLOGICAL ANALYTES**

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**RESPONSE TO REQUIREMENTS FOR  
RESTRICTION AND ELECTION OF SPECIES**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

This is in response to the Office Communication mailed May 5, 2003, requiring  
restriction under 35 USC 121.

**THE REQUIREMENT FOR RESTRICTION**

Claims 1-72 are subject to a restriction requirement under 35 USC 121. The requirement  
to restriction requires the Applicants to elect a single group, as well as certain species.

Election is required to one of the following groups:

- I. Claims 1-9 and 65-67, drawn to complexes of bacteriocins and metals.
- II. Claims 10-17 and 57-64, drawn to methods of synthesizing complexes of  
bacteriocins and metals.
- III. Claims 18-32 and 68-70, drawn to methods of forming complexes of  
bacteriocins and metals on a sample to be tested.
- IV. Claims 33-38, 43, and 51-53, drawn to diagnostic tests relating to bacteria.
- V. Claims 39-42, 44-47, and 54-56, drawn to chemiluminescent assays of

pathogens.

VI. Claims 48-50, drawn to methods of treatment.

VII. Claims 71 and 72, drawn to chemiluminescent agglutination assays.

Should Groups I-VI be elected, the Examiner has also required election of one of the following species:

- (A) a lantibiotic
- (B) a non-lanthionine peptide;
- (C) a large heat labile protein; or
- (D) a complex bacteriocin.

and (including a sub-species election)

- (1) a transitional metal; or
- (2) a lanthanide metal.

In addition to the above, if Group II is elected, a species election to one of the following must be made:

- II-a the desalting is performed by dialysis; or
- II-b the desalting is performed by gel filtration; and
- II-c the drying is performed by freeze drying; or
- II-d the drying is performed by spray-drying.

In addition, should Group VII be elected, a species election to one of the following must be made:

- (VII-a) a transitional metal; or
- (VII-b) a lanthanide metal

#### **RESPONSE**

In response to the restriction requirement, Applicants hereby elect to prosecute Group I (Claims 1-9 and 65-67), which is directed to complexes of bacteriocins and metals, without traverse. As Applicants set for the below, it is believed that this grouping of claims should also include Claims 63 and 64.

Since an election of Group I is made, the Examiner has also required election of a bacteriocin and a detectable label species. Applicants hereby elect to prosecute a lantibiotic as

the bacteriocin species, and a transitional metal as the detectable label species. In addition, Applicants elect cobalt as the transitional metal sub-species. In the event that the Examiner also requires a sub-species election of the lantibiotic, Applicants provisionally elect nisin as the lantibiotic sub-species.

Claims 1-4, 6-9 and 64 read on the elected species. Claims 5, 63 and 65-67 do not read on the elected species.

Applicants remind the Examiner that this election of species is for the sole purpose of the Examiner's initial search and examination, and that upon allowance of a generic claim, Applicants are entitled to have all non-elected species encompassed by that claims examined (37 C.F.R. 1.141).

#### SUMMARY

The above election is submitted for the purpose of facilitating allowance of the claims. A sincere effort has been made to place this application in condition for allowance and an early notice of allowance is earnestly requested. Applicants expressly reserve their right under 35 USC § 121 to file a divisional application directed to the nonelected subject matter during the pendency of this application.

Applicants respectfully request consideration of the foregoing remarks, and reconsideration of the claims deemed to be within Group I.

Should the Examiner have any questions concerning this communication, or wish to discuss the case as search and examination are initiated, please contact the undersigned attorney at (650) 330-4916.

Respectfully submitted,

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